

## **REMARKS**

The Applicants respectfully request reconsideration in view of the following remarks and amendments. Claims 1, 6, and 7 are amended. Accordingly, claims 1-7 are pending in the application.

### **I. Objections to the Specification**

The Examiner objected to the title of application for not being descriptive. In response, the Applicants amended the title in the above section to “IMAGE PROCESSING APPARATUS FOR USING DISTORTION AMOUNT INFORMATION.” In light of the amendment, the Applicants believe that the title is now sufficiently descriptive. Accordingly, reconsideration and withdrawal of the objection to the title is respectfully requested.

### **II. Claims Rejected Under 35 U.S.C. § 112**

Claim 7 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention. In response, the Applicants amended claim 7 to remove the elements of “the decoding code” and “the calculating code” to correct the antecedent basis issue with these elements. In light of the amendment, the Applicants believe that claim 7 complies with 35 U.S.C. § 112, second paragraph. Accordingly, reconsideration and withdrawal of the rejection of claim 7 is respectfully requested.

### **III. Claims Rejected Under 35 U.S.C. § 101**

Claims 6 and 7 stand rejected under 35 U.S.C. § 101 for being non-statutory subject matter. To accommodate the Examiner’s request, the Applicants amended the claims to replace the elements of “article of manufacture having one or more recordable media” with “computer readable recording medium” according to the Examiner’s suggestion. The amendment is supported, for example, by paragraph [0039] of the Specification. Accordingly, reconsideration and withdrawal of the rejection of claims 6 and 7 is respectfully requested.

#### IV. Claims Rejected Under 35 U.S.C. § 103

Claims 1 and 3-7 stand rejected under 35 U.S.C. § 103(a) as being obvious over JPEG 2000 Image coding system Part 1 (Annex D.5, J.7 and J.14, ISO/IEC 15444-1, 1st Edition, 2000-12-15) (hereinafter “JPEG2000”) in view of U.S. Patent No. 6,337,710 issued to Watkins (hereinafter “Watkins”). To establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) there must be a reasonable expectation of success; and (3) the references when combined must teach or suggest all of the claim limitations. See MPEP § 2142.

Claim 1, as amended, recites the elements of “an error detecting unit to detect an occurrence of an error in each unit of the code sequence based on a location of an end of packet header marker.” The amendment is supported, for example, by paragraph [0062] of the Specification. JPEG2000 fails to teach these elements. JPEG2000, instead, simply teaches that error detection is based on *decoding the segmentation symbol*, rather than “based on a location of an end of packet header marker,” as recited in the claim. See JPEG2000, page 106, Annex D.5. JPEG2000 further supports this conclusion by disclosing that the “correct decoding of this [segmentation] symbol confirms the correctness of the decoding of the bit-plane. See JPEG2000, page 200, third paragraph. Without more, simply decoding the segmentation symbol fails to apprise the particular location of such a symbol, let alone, “a location of an end of packet header marker,” as recited in the claim. Consequently, JPEG2000 fails to teach or suggest the elements of “an error detecting unit to detect an occurrence of an error in each unit of the code sequence based on a location of an end of packet header marker,” as recited in the claim. In addition, the Examiner has not cited and the Applicants are unable to discern any portion of Watkins that teaches or suggests these missing elements. As a result, JPEG2000 in view of Watkins fails to teach or suggest each element of claim 1. In addition, dependent claims 3-5 are patentable over JPEG2000 in view of Watkins because of their dependencies on claim 1. Accordingly, reconsideration and withdrawal of the rejection of claims 1 and 3-5 are respectfully requested.

Moreover, with respect to claim 5, the Examiner on page 5 (see second paragraph) of the Office Action stated that “[w]ell known software such as Adobe Photoshop also informed users in case of errors.” The Applicants interpret the Examiner’s statement as an attempted taking of

Official Notice without documentary evidence and traverse it for the following reasons. As required by MPEP § 2144.03(A), Official Notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. Here, the Examiner failed to provide any sort of documentary evidence to support the assertion that “Adobe Photoshop” allegedly informs users of errors. The Examiner cannot reach conclusions based on his own understanding or experience, or even through an assessment of what would be basic knowledge or common sense, and must point to some concrete evidence in the record to support his findings. See In re Zurko, 258 F.3d 1379 at 1386 (Fed. Cir. 2001). As the Examiner is aware, under the Administrative Procedure Act, USPTO Board decisions are subject to a substantial evidence standard of review. See MPEP § 2144.03. By extension, the Examiner’s taking of Official Notice must also meet the substantial evidence standard. Therefore, because the Examiner’s statement failed to point to any citation or evidence, the taking of Official Notice was equivalent to an assessment of basic knowledge and common sense not based on any evidence in the record and, as a result, lacks substantial evidence support. See In re Zurko at 1385.

In regard to claims 6 and 7, these claims recite analogous limitations to those in claim 1. Therefore, for at least the reasons mentioned in connection with claim 1, JPEG2000 in view of Watkins fails to teach or suggest each element of claims 6 and 7. Accordingly, reconsideration and withdrawal of the rejection of claims 6 and 7 are respectfully requested.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being obvious over JPEG2000 in view of Watkins in further view of U.S. Patent No. 6,756,921 issued to Kimura et al. (hereinafter “Kimura”).

With respect to claim 2, this claim depends on base claim 1 and incorporates the limitations thereof. Therefore, for at least the reasons mentioned in connection with claim 1, JPEG2000 in view of Watkins fails to teach or suggest each element of claim 2. In addition, the Examiner has not cited and the Applicants are unable to discern any portion of Kimura that teaches or suggests these missing elements. As a result, JPEG2000 in view of Watkins in further view of Kimura fails to teach or suggest each element of claim 2. Accordingly, reconsideration and withdrawal of the rejection of claim 2 are respectfully requested.

## CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (408) 720-8300.

Respectfully submitted,

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### **CERTIFICATE OF MAILING:**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 27, 2007.

  
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